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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.03.2021

PRONOUNCED ON : 12.03.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 1697 of 2008

Vana Roja
W/o. Selapathi

... Appellant/Plaintiff

Vs.

M. Krishnappa
S/o. Mookivenkatappa

... Respondent/Defendant

Prayer:

Second Appeal filed under Section 100 of CPC, 1908 against the judgment and decree dated 16.11.2007 made in A.S.No.38/2005 on the file of the court of Principal subordinate Judge, Krishnagiri, reversing the judgment and decree made in O.S.No.281/2002, dated 12.08.2005, on the file of the District Munsif Court, Krishnagiri.

For Appellant : Mr.G.Jeremiah
for M/s.S.Gajendaran

For Respondent : Mr.D.Shivakumaran

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 16.11.2007 passed in A.S.No.38/2005 on the file of the Principal subordinate Court, Krishnagiri, reversing the judgment and decree passed in O.S.No.281/2002, dated 12.08.2005, on the file of the District Munsif Court, Krishnagiri.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. The plaintiff in O.S.No.281 of 2002 is the appellant in the Second Appeal.



4. Suit for declaration and permanent injunction.

5. The case of the plaintiff, in brief, is that the suit property belonged to the ancestors of the plaintiff's mother Ellammal and the defendant, who is the brother of Ellammal, and the defendant has a son by name Venkatachalapathy and about 3 1/2 years ago, the marriage between the plaintiff and Venkatachalapathy was solemnised as per Hindu law and caste custom. However, there was no issue out of the marriage and due to misunderstanding, the marriage was broken by divorce as per the caste and custom in the presence of the panchayatars and the parties are living separately. The suit property originally belonged to the great grand father of the plaintiff Bettha Hanumappa and after his demise, had devolved upon Moongi Venkatappa, the grand father of the plaintiff and the father of the defendant and after the demise of Moongi Venkatappa, there was a family arrangement between the plaintiff's mother and the defendant and the plaintiff's mother was given the suit property in the presence of the panchayatars and since then, the plaintiff's mother was enjoying the same and as the plaintiff became divorcee, the plaintiff's mother executed a registered gift deed in favour of the plaintiff qua the suit property on 06.08.2001 to make certain provisions for her livelihood and the same had been accepted by the plaintiff and since the date of gift deed, it is only the plaintiff who is in the possession and enjoyment of the suit property. While so, the defendant, without any entitlement or authority, attempted to interfere with her possession and enjoyment and hence according to the plaintiff, she has been necessitated to lay the suit against the defendant for appropriate reliefs.

6. The defendant resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts and admitted that the suit property is the ancestral property of the defendant and further admitted that the plaintiff's mother Ellammal is his sister and further admitted that the marriage between the plaintiff and the defendant's son did not go well and the same is, according to the defendant, due to the adamant character of the plaintiff and despite the intervention of the elders and the police, the plaintiff failed to live with her husband and gave her consent for divorce from her husband and thereafter, illegally came into contact with one V. Selapathy and are living now as husband and wife and it is false to state that in the family arrangement between the plaintiff's mother and the defendant, the suit property was allotted to the plaintiff's mother and since then it is only the plaintiff's mother who is in the possession and enjoyment of the same and thereafter the plaintiff's mother executed the registered deed settling the same in favour of the plaintiff and the plaintiff is in the possession and enjoyment



of the suit property and according to the defendant, all the abovesaid allegations are totally false and it is further stated that no family arrangement was effected between the plaintiff's mother and the defendant and therefore, there is no question of allotment of the suit property to the plaintiff's mother in the alleged family arrangement and the plaintiff is not in the possession and enjoyment of the suit property pursuant to the alleged gift deed and it is only the defendant who is in the possession and enjoyment of the suit property and there is no cause of action for the suit and the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.Ws.1 to 3 were examined and Exs. A1 to A6 were marked. On the side of the defendant, D.Ws.1 to 4 were examined and Exs. B1 and B2 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submission put forth, the trial court was pleased to decree the suit in favour of the plaintiff as prayed for. On appeal by the defendant, the first appellate court, on an appreciation of the materials available on record and the submissions made by the respective parties, was pleased to set aside the judgment and decree of the trial court and by way of allowing the first appeal preferred by the defendant, resultantly dismissed the plaintiff's suit. Impugning the same, the present second appeal has been laid by the plaintiff.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

- 1) "Whether the plaintiff/appellant herein has entitled for as prayed for, she has right of her 1/2 share in well and 25 yielding coconut trees in the suit property originally belonged to the ancestor-great grand father Betha Hanumappa?
- 2) When the plaintiff's mother Ellammal having a right to execute the gift deed and her daughter as per oral family arrangement between the plaintiff's mother Ellammal and the defendant/respondent herein, in respect of the ancestral property, and thereby suit property was allotted to the said Ellammal?

Subsequently, the following additional substantial question of law was also formulated.

"Whether the lower appellate court is correct in having failed to frame points for consideration as mandated by Order 41 Rule 31 and various judgments of the Hon'ble Supreme Court?"



10. The suit has been laid by the plaintiff simplicitor for the relief of permanent injunction on the footing that she is in the possession and enjoyment of the suit property by virtue of the settlement deed dated 06.08.2001 executed by her mother Ellammal, marked as Ex.A1. To sustain the competency of Ellammal to execute the settlement deed Ex.A1 qua the suit property, according to the plaintiff, the suit property had been allotted to the share of Ellammal in the family arrangement effected with the defendant. The abovesaid case of the plaintiff has been seriously disputed and controverted by the defendant in toto. In such view of the matter, it is for the plaintiff to establish that her mother Ellammal had the competency and entitlement to settle the suit property in favour of the plaintiff under Ex.A1. It is also for the plaintiff to establish that the suit property was allotted to Ellammal in the family arrangement said to have been effected between the plaintiff's mother and the defendant and also to establish that Ellammal was in the possession and enjoyment of the suit property following the family arrangement. Further, the plaintiff is also to establish that the suit property is in her possession and enjoyment particularly when she has only sought for the relief of permanent injunction on the footing that the suit property is in her possession and enjoyment following Ex.A1 settlement deed.

11. From the materials placed on record, it is found that the plaintiff's mother Ellammal and the defendant are sister and brother. It is not in dispute that the suit property and the other properties are the ancestral properties of Ellammal and the defendant. Now according to the plaintiff, the suit property was allotted to the share of Ellammal in the family arrangement effected between Ellammal and the defendant. The same has been totally challenged by the defendant. The plaintiff has not even whispered as to when the alleged family arrangement took place between her mother and the defendant. Further the plaintiff has also not come forward clearly as to what were the properties, which are the subject matter of the family arrangement, what are the properties allotted to the defendant and what are the properties allotted to the plaintiff's mother and who had witnessed the said family arrangement, when and where it had taken place and whether the same was effected by a written instrument or orally and with reference to the abovesaid facts, there are no clear pleas in the plaint. Very vaguely the plaintiff would come forward with the case that, in the family arrangement effected between her mother and the defendant in the presence of the panchayatars, the suit property has been allotted to her mother.

12. However, as rightly contended by the defendant and determined by the first appellate court, when there is no material on the part of the plaintiff to hold that such a family



arrangement had been effected or made between her mother and the defendant qua the ancestral properties and when there is no proof adduced on the part of the plaintiff worth acceptance evidencing that the suit property had been allotted to her mother's share and when there is no material on the part of the plaintiff to hold that her mother had been in the possession and enjoyment of the suit property following the so called family arrangement and when Exs. A2 to A6 by themselves, would not be sufficient to hold that Ellammal was in the possession and enjoyment of the suit property following the family arrangement particularly when the abovesaid documents have come into existence after the settlement deed marked as Ex.A1, it is found that, as held by the first appellate court and as contended by the defendant, the plaintiff has miserably failed to establish the family arrangement pleaded by her and the allotment of the suit property to her mother in the said family arrangement and the enjoyment of the suit property by her mother Ellammal till the date of Ex.A1.

13. Inasmuch as the plaintiff has failed to establish the family arrangement and the allotment of the suit property in favour of Ellammal, her mother, it is evident that the plaintiff's mother would have no competency or entitlement to settle the suit property in favour of the plaintiff. Though the suit property and the other properties are admitted to be the ancestral properties belonging to the plaintiff's mother Ellammal and the defendant, till the partition is effected between the plaintiff's mother and the defendant qua the ancestral properties in the manner known to law, the properties being only the undivided properties, in such view of the matter, assuming that the plaintiff's mother has a share in the ancestral properties, she would not be entitled to settle the undivided family properties without the consent of the other sharer. For this proposition of law, we have the decision of the Apex Court reported in 1987 (3) SCC 294 (Thamma Venkata Subbamma (dead) by Lr vs. Thamma Rattamma and others) wherein it has been held that the gift by a coparcener of his undivided coparcenary interest to another coparcener without consent of other coparceners is void.

14. When as above pointed out, the plaintiff having miserably failed to establish the allotment of the suit property in favour of her mother in the alleged family arrangement, the plaintiff's mother would not be entitled to settle the suit property in favour of the plaintiff. Even if the truth of the abovesaid settlement deed is to be accepted, the settlement deed being a void document as held by the Apex Court in the decision referred to supra, no valid title would be gathered by the plaintiff by virtue of Ex.A1 settlement deed. In such view of the matter, the first appellate court is justified in holding



that the plaintiff cannot seek claim of title to the suit property based on Ex.A1 settlement deed when she had miserably failed to establish that her mother had the legal entitlement to settle the suit property in her favour.

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15. The plaintiff has also failed to establish that following Ex.A1 settlement deed, the suit property is in her possession and enjoyment. Pointing to the same, there is no acceptable and reliable material on the part of the plaintiff. On the other hand, the plaintiff during the course of evidence examined as P.W.1 has clearly admitted that she is not in the possession of the suit property and it is only the defendant who remains in the possession and enjoyment of the suit property. The position being above, when the plaintiff has come forward with the suit only for the relief of permanent injunction claiming title to the suit property based on Ex.A1 and when, as above discussed, the plaintiff has miserably failed to establish the truth and validity of the settlement deed Ex.A1 particularly failed to establish that her mother had the competency to execute the said settlement deed and her mother till date had not sought for the partition of her share in the ancestral properties, if any, from the defendant as per law, as rightly contended by the defendant, the plaintiff's mother cannot be allowed to grab the suit property from the defendant by way of the present suit instead of seeking partition of her lawful share, if any, in the ancestral properties as per law.

16. In view of the abovesaid discussions, the first appellate court, on proper and correct reasonings, is found to have rejected the plaintiff's case and when the reasonings and conclusions of the first appellate court are found to be based upon the appreciation of the materials available on record in the right perspective, both oral and documentary and when they are not shown to be, in any manner, perverse, illogical and irrational, I do not find any valid reason to interfere with the same.

17. The plaintiff's counsel during the course of arguments would contend that the first appellate court has not formulated the points for determination as contemplated under Order 41 Rule 31 CPC. However, as rightly contended by the defendant's counsel, though the first appellate court has not formulated different points for consideration, however, under the main point for determination formulated by it, it has discussed in detail the issues put forth by the respective parties and rightly determined the said issues by answering all the points and in such view of the matter, it cannot be held that the first appellate court has not complied with the requirement of Order 41 Rule 31 CPC by formulating separate points for consideration.



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18. The counsel for the plaintiff, in support of his various contentions, placed reliance upon the following decisions reported in

- 1) 2017 (6) CTC 764 (U. Manjunath Rao vs. U. Chandrashekar & anr)
- 2) 2010 (5) CTC 719 (B.V. Nagesh & Anr. vs. H.V. Sreenivasa Murthy)
- 3) (2011) 4 Supreme Court Cases 240 (H. Siddiqui (dead) by Lrs. v. A. Ramalingam)

Similarly, the counsel for the respondent in support of his contentions, placed reliance upon the following decisions reported in

- 1) 2014 (3) MWN (Civil) 541 (N. Kaliamoorthy and others vs. Vairavan Chettiar)
- 2) 2014 (5) CTC 507 (Manickam vs. C. Suthandiram and others)
- 3) 2016 SCC Online Mad 31655: (2017) 3 Mad LJ 114 (Arulmigu Ulageswaraswamy and Varadaraja Perumal Temples Allalapuram, rep. by its Executive officer vs. Subramaniam & others)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

19. In the light of the abovesaid discussions, the substantial questions of law formulated in the second appeal are answered against the plaintiff and in favour of the defendant.

20. In conclusion, the judgment and decree dated 16.11.2007 passed in A.S.No.38/2005 on the file of the Principal subordinate Court, Krishnagiri, reversing the judgment and decree passed in O.S.No.281/2002, dated 12.08.2005, on the file of the District Munsif Court, Krishnagiri. are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Krishnagiri.

2.The District Munsif,
Krishnagiri.

3.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.D.Shivakumaran, Advocate Sr No.16032

+1cc to Mr.S.Gajendran, Advocate Sr No.16216

S.A.No.1697 of 2008

NMI (CO)
PR (15/11/2021)